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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DIANA MADRIGAL GUAJARDO, Plaintiff and Appellant, v. PACIFIC BELL TELEPHONE COMPANY, Defendant and Respondent.	B238075 (Los Angeles County Super. Ct. No. BC426499)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

Roderick & Arnold, Trina R. Roderick for Plaintiff and Appellant.

Law, Brandmeyer & Packer, Yuk K. Law and David J. Ozeran for Defendant and Respondent.

I. INTRODUCTION

Plaintiff, Diana Madrigal Guajardo, appeals from a summary judgment entered in favor of her employer, defendant, Pacific Bell Telephone Company, on her first amended complaint. Most of plaintiff's claims arise from alleged violations of the Fair Employment and Housing Act. We affirm.

II. PROCEDURAL HISTORY

A. The First Amended Complaint

Plaintiff filed the complaint on November 19, 2009. The first amended complaint (the operative pleading) contains seven causes of action for: disability discrimination (Gov. Code,[1] § 12940 et seq.) (first); failure to accommodate (§ 12940, subd. (m)) (second); hostile work environment (§ 12940 et seq.) (third); retaliation (§ 12940, subd. (h)) (fourth); failure to prevent discrimination and harassment (§ 12940, subd. (k)) (fifth); intentional emotional distress infliction (sixth); and wrongful demotion in violation of public policy (Lab. Code, § 132a) (seventh). Plaintiff alleges that she had been an employee of defendant more than 10 years. Plaintiff worked in the Call Center Division providing assistance to the general public. The duties included extensive use of her hands, wrists and arms for typing, computer use and writing. In November 2007, plaintiff underwent carpal tunnel surgery on her right wrist and hand for a work related injury. However, plaintiff's recovery was slowed due to hyperthyroidism, which caused her medical condition to deteriorate. On March 27, 2008, plaintiff underwent carpal tunnel surgery but this time on her left wrist and hand for a work related injury.

On March 16, 2009, plaintiff underwent a second carpal tunnel surgery on her right hand. Plaintiff was "placed on disability" by her physician as a result of the March

[1] All further statutory references are to the Government Code unless otherwise indicated.

16, 2009 surgery. The first amended complaint alleges: "29. On or about March 25, 2009, defendant . . . threatened to terminate plaintiff's employment if she did not return to work. [¶] 30. In fear of losing her job, plaintiff returned to work despite her disability status. Plaintiff's physician released her to return to work for no more than four hours per day. [¶] 31. On her return to work, plaintiff was unable to use her right hand or work more than four hours per day, but was forced to do so in the course [and] scope of her job duties at the express direction of her superiors to plaintiff's detriment, including hospitalization from approximately April 27, 2009 to May 5, 2009." Plaintiff further alleged that defendant had discriminated against her throughout her tenure by: forcing her to work while she was disabled; failing to accommodate her medical condition; denying her medical treatment; denying her time off from work; denying her a short term disability; and threatening to terminate her. Plaintiff alleged that the harassment and discrimination continued to the present.

B. The Summary Judgment Motion

After answering the first amended complaint, defendant filed a summary judgment motion on August 10, 2011. The summary judgment or adjudication motion was supported by a separate statement of undisputed facts which in turn was based on four declarations, exhibits, pleadings and other documents. Notably, plaintiff did not produce any evidence demonstrating triable issues of material fact in her initial response to defendant's undisputed fact statement. Rather, plaintiff's opposition urged the trial court to interpret defendant's alleged undisputed facts in her favor. Plaintiff subsequently filed an amended separate statement of undisputed facts supported by the declaration of Trina Roderick. Ms. Roderick is plaintiff's attorney. Under those circumstances, defendant asserted and plaintiff agreed that the following facts were undisputed.

All Commerce Center disability and workers compensation claims for defendant's employees are handled and managed by AT&T Integrated Disability Services Center

("the services center"). The services center is a third-party department that is operated and managed by an independent vendor, Sedgwick Claims Management Services. Defendant's employees are provided the services center's guide which sets forth for administrative and procedural steps for disability and workers compensation claims.

Commerce Center managers and supervisors have no authority to make independent decisions, findings or approvals of disability status, claims or accommodations requests. The services center maintains a file for Commerce Center employee disability and workers compensation claims. The file includes claims for return to work following a disability or an on the job injury absence. The file also contains requests for workplace restrictions and job accommodations with duration of more than 10 business days. Commerce Center supervisors, managers and administrators do not have nor can they request access to this file. No specific information regarding an employee's medical condition is provided or released to the Commerce Center management.

In addition, plaintiff did not dispute that the services center had the following policies but disagreed as to whether they were lawful. The disputed policies were that an employee with a disability, injury or medical condition must provide requests for workplace restrictions and accommodations to the services center. And, such requests must be supported by documentation. The services center staff cannot make determinations and findings until medical documentation is received setting forth the requested or recommended workplace restrictions and accommodations. Once the employee provides the medical documentation, services center staff contacts management to determine whether the restrictions and accommodations can be implemented. If implementation is impossible, the services center and management work with the employee to determine alternative, reasonable accommodations. As previously noted, plaintiff disputed that defendant's policies complied with California law. Plaintiff argued that employers have an affirmative duty to accommodate a "known disability" without a request. She further argued that all decision makers do not have to be informed before the obligation arises to attempt an accommodation.

Plaintiff began working for defendant in 1999 as a collections representative at its Commerce Center. Plaintiff subsequently became a bilingual collections representative, which is her current position. The position included intensive and substantial typing duties, high volume of telephone calls and interactions with customers. From May to November 2007, plaintiff worked in the position of Relief Differential, to approved collection representatives, who alternate every two to three weeks. The job duties include handling escalated customers' service calls and assisting with their account questions. The position, although expected to be performed with leadership skills, is a not a managerial position. The position requires a "meets or exceeds in job performance" evaluation for six consecutive months and the maximum of one customer courtesy complaint. The lack of availability affects an employee's inclusion in the rotation. Any member of the Relief Differential team is removed after a leave of six months or more for whatever reason. The employee must resubmit an application after meeting the criteria for three to six consecutive months.

In March 2007, plaintiff filed a workers' compensation claim for injuries to her hands arising from her employment with defendant. In July 2009, plaintiff amended the workers' compensation claim to include a claim for injury to her psyche. On November 20, 2007, plaintiff, who was working as a bilingual collections representative, was accommodated with leave from work at the Commerce Center. Plaintiff returned to work from this leave on January 2, 2008. Plaintiff was accommodated with "Dragon Speech" technology upon her return to work in January 2008. Plaintiff had also been provided with use of an ergonomic desk and mouse. Plaintiff had an ergonomic evaluation of her workspace. The accommodation continued until March 26, 2008, when plaintiff again went on leave from the Commerce Center. According to the first amended complaint, this is the time period when plaintiff was having surgeries on her left and right wrists for a work related injury beginning on March 27, 2008. The last surgery was in November 2008. Defendant sent correspondence to plaintiff in May through October of 2008. The correspondence extended plaintiff's leave, updated and informed her of her employment

status with defendant. Plaintiff did not dispute that, at all times through April 9, 2009, defendant provided reasonable accommodations for her.

Plaintiff argued that, after April 9, 2009, defendant failed to accommodate her. The issue arose according to plaintiff with a letter addressed to her and dated March 25, 2009 from the Commerce Center Administrator, Peter Brizo. Mr. Brizo advised plaintiff of her work status with defendant. The letter provides in part: "On April 22, 2008, you reported off work due to a medical condition. You have had previous leaves from April 23, 2008 through the date of this letter. [¶] On May 2, 2008, you were notified by [the services center] that your Short Term Disability (STD) benefits were not authorized from April 23, 2008. Pursuant to information provided by [the services center], you have not established that you are disabled from work and, to date, you have not returned to work. Therefore: [¶] If you are incapable of performing the essential functions of your job, either with or without a reasonable accommodation, you may be eligible for a priority job search. I urge you to discuss this issue with your treating physician in order to evaluate whether a job search would be appropriate. Please have your physician complete the enclosed Work Capacities Checklist (WCCL). You must return the completed WCCL by April 10, 2009, so that we can determine whether to proceed with a priority job search." In the alternative, plaintiff was advised, "Report to work, ready, willing and able to perform your job as a Collection Representative on or before April 10, 2009." The March 25, 2009 letter further stated, if plaintiff did not return to work or timely return the Work Capacities Checklist, she would be terminated effective April 10, 2009.

Plaintiff returned to work on Friday April 10, 2009, more than one year after going on leave. Prior to returning to work on April 10, 2009, plaintiff provided no medical documentation requesting reasonable workplace restrictions or job accommodations for her return to work. Nor did plaintiff's physician make such a request. The services center staff made no determination or recommendations prior to her return. The services center staff did not contact plaintiff's managers or supervisors. Upon her return to work, plaintiff presented the Work Capacities Checklist and medical documents to Mr. Brizo. Mr. Brizo sent the checklist and documents to the services center via facsimile

transmission. The documents were filled out by Dr. Jon Greenfield. They indicated that plaintiff would be able to work four hours in an eight-hour work day. The documents also requested work restrictions of four hours per day.

Plaintiff worked a three-hour day on April 10, 2009. On Monday, April 13, 2009, plaintiff worked a four-hour day. Also on that date, a services center staffer contacted plaintiff's physician to discuss and confirm the workplace restriction of four-hour work days. While awaiting approval from the services center, plaintiff was scheduled to work eight-hour shifts on April 14 and 15, 2009. During this time period, plaintiff was retraining for her collections representative position. Plaintiff did not dispute that a bilingual collections representative on leave for more than three months is required to undergo retraining and learning of updates prior to returning to normal job duties. The training required limited or no use of the employees' hands. The parties also did not dispute that, after being absent for over a year, plaintiff was removed from the relief differential rotation when she returned to work on April 10, 2009. The requested accommodations were approved on April 15, 2009, with 15-minute breaks. From April 16 through 27, 2009, plaintiff worked 4-hour shifts, with additional 15-minute breaks.

On April 27, 2009, plaintiff's hand became swollen at work. Plaintiff claimed that she was told that she had to finish her shift prior to seeking medical attention. If she left without finishing the shift, she might have incurred an "unauthorized" or "unprotected" absence. Defendant asserts that its policies provide an employee could simply inform any manager of an illness, sickness or medical emergency and leave the Commerce Center. After completing her shift, plaintiff went to the doctor and was subsequently hospitalized from April 27 until May 9, 2009. Plaintiff went on leave on April 27 until November 4, 2009. On November 4, 2009, plaintiff returned to work with four-hour work day restrictions.

Plaintiff also did not dispute she had not been the subject of any derogatory or harassing comments by anyone at her job concerning the disability or accommodations. On December 23, 2009, at an Agreed Medical Evaluation for her workers' compensation claim, plaintiff stated that she did not feel threatened with termination. Plaintiff stated

she was never subject to suspension or demotion. Plaintiff did not recall any specific acts of abuse, mistreatment, harassment of discrimination by defendant's employees. Plaintiff went on leave again on June 10, 2010, and had not returned to work as of the date the summary judgment was filed.

Plaintiff opposed the summary judgment motion by asserting: defendant's policies violated California law; defendant outsourced its duties to Sedgwick, Claims Management Services; defendant did not authorize its managers and supervisors to make modest accommodations; defendant threatened to terminate plaintiff if she did not return to work by April 10, 2009; defendant refused to follow Dr. Greenfield's work restrictions for at least three days; defendant refused to allow plaintiff to leave early on April 27, 2009 when her hand was swollen; and, upon her return to work, she was not offered the relief differential position. Plaintiff conceded there was no merit to her hostile work environment claim.

Defendant filed a reply to the opposition which noted that plaintiff had not submitted any evidence in opposition to the summary judgment motion. Plaintiff subsequently filed an amended separate statement. In her amended separate statement, plaintiff cited her deposition testimony that she "felt" harassed because of her disability. Plaintiff cited her deposition testimony in which she stated that, on February 25, 2010, plaintiff received a warning of a one-day suspension from Mr. Brizo for attendance. Plaintiff testified that she was absent four days in February 2010 when her carpal tunnel pain deteriorated. However, plaintiff was not suspended. When asked if she thought if she was disciplined because of the four-hour shift accommodation, she testified: "No, I don't know. I don't know."

On December 1, 2011, the order granting the summary judgment was signed. On the same day, judgment was entered in defendant's favor. This timely appeal followed.

III. DISCUSSION

A. Standard of Review

In *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burdens on summary judgment or adjudication motions as follows: "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted, see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.) We review the trial court's decision to grant the summary judgment motion de novo. (*Coral Const., Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding on us because we review its ruling not its rationale. (*Coral Const., Inc. v. City and County of San Francisco, supra*, 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673; disapproved in part in *Reid v. Google* (2010) 50 Cal.4th 512, 527.)

Those are the only issues the summary judgment motion must address. (*Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244, 1249-1250; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.)

B. The Absence of Triable Issues of Material Fact

1. The discrimination cause of action

The Fair Employment and Housing Act prohibits an employer from discriminating against an employee based on a physical disability. (§ 12940, subd. (a): *Green v. State of California* (2007) 42 Cal.4th 254, 262.) A prima facie claim under section 12940, subdivision (a) requires proof of: a disability; qualification for the job; and an adverse employment action because of the disability. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354; *Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 159-160.) Defendant's evidence established plaintiff could not show it discriminated against her based on a disability. Defendant submitted evidence there was never an adverse employment action taken against plaintiff. Plaintiff offered no evidence to the contrary. Thus, no triable issues of material fact existed on the discrimination claim in the first cause of action.

2. There is no merit to the failure to accommodate claim.

In the second cause of action, plaintiff claims defendant failed to provide reasonable accommodation for her disability. (§ 12940, subd. (m).) A failure to accommodate claim requires proof of: a disability; plaintiff's qualification to perform the position; the employer's failure to reasonably accommodate plaintiff's disability; plaintiff's harm; and plaintiff's harm was the result of the failure to accommodate. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1009-1010; *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1192.) We agree with defendant that the undisputed evidence established that defendant did not fail to reasonably

accommodate plaintiff's disability. Plaintiff agreed that she was given every accommodation she requested before April 10, 2009. And, during the time span between April 10 and April 27, 2009, defendant reasonably responded to plaintiff's every requested accommodation. In fact, plaintiff was given extra 15-minute breaks. Under the circumstances, plaintiff cannot establish defendant failed to accommodate her disability. (§ 12940, subd. (m); *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228; *Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 370.)

Plaintiff's assertions to the contrary lack merit. Plaintiff claims triable issues of material fact were created based on the following circumstances: defendant sent a letter to plaintiff dated March 25, 2009; defendant delayed making an accommodation for "several days" after her April 10, 2009 return date; defendant demoted her by taking the Relief Differential position from her; on April 27, 2009, plaintiff was told to finish her shift after her arm began swelling; and defendant gave her a one-day suspension and a written warning after she was placed on a four-day leave to treat her hand in February 2010. This latter event occurred after plaintiff's physician recommended a four-day leave period. These claims all lack merit.

First, plaintiff claims the March 25, 2009 letter, which was sent to her nine days after a second surgery, established the accommodation claim because it threatened termination. We disagree. Notably, the March 25, 2009 letter was sent to plaintiff after she had been on leave since April 22, 2008. The reasonable accommodation statute does not require an employer to hold a job open indefinitely. (*Hanson v. Lucky Stores, Inc.*, *supra*, 74 Cal.App.4th at pp. 226-227; see also *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 263.) And, although listing termination as an alternative, the March 25, 2009 letter specifically gave plaintiff other options for remaining employed with defendant. One of the options included returning to work with or without accommodation. If she was incapable of performing her essential job functions, plaintiff was to submit a Work Capacities Checklist. The checklist was to be prepared by plaintiff's physician. Plaintiff was advised she may be eligible for a priority job search. No reasonable inference can be made that sending of a letter to an employee on leave of

absence for over a year which outlined employment options amounts to a failure to accommodate.

Second, there is also no merit to the claim defendant failed to reasonably accommodate plaintiff on the two days she trained eight hours a day on April 14 and 15, 2009. Although plaintiff was scheduled to work eight hours, defendant produced uncontrovered evidence plaintiff was not working in her position as a collection representative. Rather, on both dates, plaintiff was being trained, which required limited or no use of her hands. More importantly, the undisputed evidence shows the eight hour days were worked while plaintiff's accommodation request was pending. Plaintiff did not dispute that, prior to April 10, 2009, defendant gave her every reasonable accommodation she requested. Plaintiff conceded that she did not request any accommodation related to her second surgery until Friday April 10, 2009, when she returned to work. After plaintiff submitted medical documentation on Friday April 10, 2009, she worked a three-hour shift. Plaintiff then worked a four-hour shift the following Monday, which was April 13, 2009. The services center followed up the request by contacting plaintiff's physician on Monday, April 13, 2009. The accommodation was approved two days later on Wednesday April 15, 2009. Thus, within five days of her April 10, 2009, request, defendant provided reasonable accommodation to plaintiff. Not only did defendant approve the 4-hour shifts, it accommodated plaintiff with extra 15-minute breaks. Plaintiff has not established defendant failed to accommodate her condition because she was scheduled to work for eight hours on April 14 and 15, 2009.

Third, plaintiff cannot prevail on her theory there is a triable controversy as to whether she should have been accommodated with or was demoted from the relief differential position. The position was neither managerial nor supervisory. The position actually rotated and required employees to meet certain criteria within a six-month period. Plaintiff, who had been on leave for nearly one year prior to her April 10, 2009 return to work, could not have met that neutral, nondiscriminatory criteria for this position. Plus, there was no evidence that plaintiff requested rotation into the position upon her return.

Fourth, plaintiff claims she was denied reasonable accommodation on April 27, 2009. On April 27, 2009, plaintiff testified her hand began to swell during her four-hour shift. Plaintiff testified at her deposition: "When my hand was really swollen on the 27th of April, since I was only working half day, Peter and Miguel said to wait until my shift was over before I went to see the doctor, when my hand was infected that day. That day is when my hand got infected. It was like a balloon." When asked whether, she could see her physician if she left work, as was her right, plaintiff testified at her deposition, "I called my doctor on my break and he said to -- if he wanted me to go right then and there but I didn't want to have an occurrence. . . ." Plaintiff expressly denied she intended to go to an emergency room. From this brief evidentiary showing, plaintiff asserts that if she left work, as was her right, she could have been subject to discipline. Where the opposition only presents speculation in lieu of specific facts, summary judgment should be entered if the burden of production has shifted. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 490; *Wiz Technology, Inc. v. Coopers & Lybrand* (2003) 106 Cal.App.4th 1, 11.) There are no specific facts that: any physician would have seen plaintiff; she told the two supervisors she wanted to leave for any reason much less to seek medical treatment (the only specific evidence is she was told to stay); or that any adverse action would have been taken had plaintiff left to see a physician. It is undisputed that plaintiff did not intend to go to an emergency room. The foregoing was insufficient to create a triable controversy as to whether the April 27, 2009 events constituted unlawful discrimination. (*Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481; *Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 807.)

Fifth, the theory that plaintiff received a one-day suspension threat on February 25, 2010 does not warrant a different result. Plaintiff testified at her deposition that defendant did not suspend her. Furthermore, plaintiff testified that she "did not know" if the one day suspension warning was related to the accommodations. No dispositive inferences can be made on this type of speculation as to defendant's motives. (*Merrill v. Navegar, Inc., supra,* 26 Cal.4th at p. 490; *Doe v. Salesian Society, supra,* 159 Cal.App.4th at p. 481.)

3. No evidence exists to support the retaliation and failure to prevent claims.

Plaintiff contends these are triable issues as to whether defendant retaliated against her in violation of the Fair Employment and Housing Act. In order to establish a prima facie case of retaliation, plaintiff must provide evidence that: she engaged in a protected activity; she suffered an adverse employment action such as termination or demotion; and there was a causal link between the protected activity and the adverse action. (*Yanowitz v. L'Oreal* (2005) 36 Cal.4th 1028, 1042; *Guz v. Bechtel, Nat. Inc., supra,* 24 Cal.4th at pp. 354-355.) In order to survive summary adjudication, plaintiff was required to offer evidence of intentional retaliation. (*Yanowitz v. L'Oreal, supra,* 36 Cal.4th at p. 1042; *Guz v. Bechtel, Nat. Inc., supra*, 24 Cal.4th at pp. 355-356; *Morgan v. Regents of the University of California* (2000) 88 Cal.App.4th 52, 68.) Plaintiff failed to produce *any evidence* of any retaliatory conduct directed against her because of her disability. For, similar reasons, the trial court correctly adjudicated the failure to prevent discrimination and harassment claims. Plaintiff conceded that there was never any discriminatory, threatening or harassing comments by defendant's employees. (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 880; *Trujillo North County Transit Dist.* (1998) 63 Cal.App.4th 280, 284.)

4. The public policy claim fails.

Plaintiff argues there is a triable controversy as to the validity of her public policy claims. All of plaintiff public policy claims are based on her discrimination, failure to prevent harassment and retaliation theories. Because plaintiff's disability claims under the Fair Employment and Housing Act fail, her derivative public policy violation theory has no merit. (*Turner v. Anheuser-Busch, Inc., supra,* 7 Cal.4th at p. 1256; *Hanson v. Lucky Stores, Inc., supra,* 74 Cal.App.4th at p. 229; see also *Jennings v. Marralle* (1994) 8 Cal.4th 121, 135, 136 [there is no public policy tort when the employer does not violate the law].)

5. The emotional distress claim lacks merit.

Defendant is correct that plaintiff's intentional emotional distress infliction claim was insufficient. The elements of this case of action are: defendant's outrageous conduct; intentional or reckless disregard of the probability of causing emotional distress; plaintiff suffered severe or extreme emotional distress; and defendant's outrageous conduct was the actual and proximate cause of emotional distress. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209; *Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1108.) Our Supreme Court has explained it has set a "high bar" on the severe emotional distress requirement. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051; see *Kelley v. The Conco Companies* (2011) 196 Cal.App.4th 191, 215-216.) No evidence established defendant's conduct in any way exceeded all bounds that are usually tolerated in a civilized society. (*Hughes v. Pair*, *supra*, 46 Cal.4th at p. 1051; see also *Haberman v. Cengage Learning, Inc.* (2009) 180 Cal.App.4th 365, 389.)

IV. DISPOSITION

The judgment is affirmed. Defendant, Pacific Bell Telephone Company, is awarded its costs on appeal from plaintiff, Diana Madrigal Guajardo.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J. FERNS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.